

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUSSELL KENNETH FOSTER,)
) CASE NO. C12-1851-RAJ-MAT
Plaintiff,)
)
v.) REPORT AND RECOMMENDATION
)
BENTON COUNTY JAIL,)
)
Defendant.)
_____)

This is a *pro se* civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff is a prisoner in Benton County Jail in Kennewick, Washington. He seeks leave to proceed with this civil rights action *in forma pauperis* (IFP). Plaintiff alleges a denial of medical attention for his upper back and neck pain, and names Benton County Jail as defendant.

Because the only defendant named in plaintiff's complaint is located in the Eastern District of Washington and because the events giving rise to the claim occurred in that judicial district, it appears that venue would be proper in the Eastern District. *See* 28 U.S.C. § 1391(b). The Court sees no basis for venue in the Western District.

When a case is filed in the wrong division or district, the district court "shall dismiss, or

01 if it be in the interest of justice, transfer such case to any district or division in which it could
02 have been brought.” 28 U.S.C. 1406(a). In this case, plaintiff will not be prejudiced by
03 dismissal of his claims as there is nothing to prevent him from re-filing them in the Eastern
04 District.

05 Accordingly, the Court recommends that plaintiff’s application to proceed IFP be
06 denied and this action dismissed without prejudice. A proposed Order accompanies this
07 Report and Recommendation.

08 DATED this 24th day of October, 2012.

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10 Mary Alice Theiler
11 United States Magistrate Judge
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